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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554
OFFICE OF SECRETARY

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF SECRETARY

In the matter of

Preemption of Local Zoning Regulation
of Satellite Earth Stations

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IB Docket No. 95-59

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**COMMENTS IN RESPONSE TO
NOTICE OF PROPOSED RULEMAKING**

The Wireless Cable Association International, Inc. ("WCAI"),^{1/} by its attorneys and pursuant to Section 1.415 and 1.419 of the Commission's Rules, hereby submits its comments in response to the *Notice of Proposed Rulemaking* ("NPRM") in this proceeding.^{2/} Specifically, WCAI is concerned that by limiting the scope of this proceeding solely to the preemption of local zoning regulations that adversely affect the reception of satellite services, and by failing to address local zoning regulations that hinder the installation of wireless cable reception antennas, the Commission is unfairly tilting the playing field in favor of wireless cable's competitors.

As the Commission is well aware, wireless cable system operators compete directly against traditional franchised cable, direct broadcast satellite ("DBS") systems and direct-to-

^{1/}WCAI is the trade association of the wireless cable industry. Its members include the operators of virtually every wireless cable system in the United States, manufacturers of reception antennas and other wireless cable transmission and reception equipment, programmers and licensees in the Multipoint Distribution Service ("MDS") and Instructional Television Fixed Service ("ITFS") that lease transmission capacity to wireless cable system operators.

^{2/}*Preemption of Local Zoning Regulation of Satellite Earth Stations*, FCC 95-180 IB Docket No 95-59 (rel. May 15, 1995) [hereinafter cited as "NPRM"].

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home C-band service providers in the distribution of multichannel video programming services.^{3/} The Commission's long-standing goal has been "to facilitate the development and rapid deployment of wireless cable services."^{4/} The rationale behind that goal is simple -- the Commission is promoting wireless cable because:

in providing communications services, the public interest is better served by competition. A competitive industry framework promotes lower prices for services, provides incentives for operators to improve those services and stimulates economic growth. An essential component of competition is choice. As we recognized in our recent report to Congress, consumers in the market for video programming do not have enough choices.^{5/}

Wireless cable operators provide consumers with choice by delivering a service to the consumer that resembles cable television, but employs terrestrial microwave channels licensed in the MDS and ITFS, rather than coaxial cable, to relay programming to small antennas mounted at subscribers' premises.^{6/} The reception antennas employed by wireless cable are

^{3/}See *Implementation of Section 19 of the Cable Television Consumer Protection and Competition Act of 1992 - Annual Assessment of the Status of Competition the Market for the Delivery of Video Programming*, 9 FCC Rcd 7442, 7467 (1994).

^{4/}*Amendment of Parts 21 and 74 of the Commission's Rules With Regard to Filing Procedures in the Multipoint Distribution Service and in the Instructional Television Fixed Service*, MM Docket No. 94-131 at ¶ 1 (rel. June 30, 1995) [hereinafter cited as "MDS Auction Order"]. See also *Amendment of Parts 21 and 74 of the Commission's Rules With Regard to Filing Procedures in the Multipoint Distribution Service and in the Instructional Television Fixed Service*, 9 FCC Rcd 7665, 7666 (1994) [hereinafter cited as "MDS Auction NPRM"].

^{5/}*Id.*

^{6/}See, e.g. *MDS Auction Order* at 2, n.1.

substantially smaller and less obtrusive than those used to receive C-band satellite services, and are in the vast majority of cases smaller than those employed to receive DBS.

While this proceeding has its origin in petitions filed by participants in the satellite industry, the evidence in the record submitted in response to public notice of those petitions demonstrates that local zoning regulations are having an unreasonable adverse impact on other communications services, too.^{7/} WCAI's members have long encountered roadblocks erected by local authorities to the installation of wireless cable reception antennas. In fact, almost five years ago the Commission specifically reported to Congress that "[a] regulatory impediment [to wireless cable] is local land use regulation, which in many localities has appeared to discriminate against wireless cable reception antennas."^{8/}

The Commission stated goal in this proceeding is "to promote healthy competition."^{9/} While the WCAI applauds the Commission for recognizing that it must amend its rules governing local regulations that unreasonably limit the use of satellite antennas, WCAI strongly disagrees with the Commission's refusal to expand the scope of this proceeding to include preemption of unreasonable local regulation of other communications antennas.^{10/} Ironically, by ignoring the cries from other industries that are experiencing similar problems

^{7/}See, e.g. Comments of Nat'l Ass'n of Broadcasters (filed July 12, 1991).

^{8/}*Competition, Rate Deregulation and the Commission's Policies Relating to the Provision of Cable Television Service*, 5 FCC Rcd 4962, 5015-16 (1990).

^{9/}NPRM, at ¶ 45.

^{10/}*Id.*, at ¶ 75.

regarding local regulation of receive antennas, the Commission is creating a regulatory disparity that limits full and fair competition.

Just as the Commission recognizes that "[t]his expanded preemption of unreasonable local regulations is necessary to promote greater access to satellite-based communications technologies nation-wide, on terms of full and fair competition with other communications services",^{11/} similar preemption should apply with respect to unreasonable local restrictions on antennas used by competitors to satellite-based communications services. The *NPRM* acknowledges that:

The Commission is committed to assist in the expansion of telecommunications in general. Local regulation that needlessly inhibits such expansion is contrary to our goals and policies.^{12/}

Given that acknowledgement, it is incongruent that the Commission refuses to expand its preemption of unreasonable local regulations in order to promote full and fair competition among all communications services, especially those that compete with the satellite-based communication technologies. The Commission should not lose sight of the forest while focusing on a single tree.

This proceeding affords the Commission an unparalleled opportunity to uniformly and consistently address the problems caused by local regulations unreasonably restricting the use of communications reception antennas -- regulations that have plagued wireless service providers for some time. Therefore, WCAI strongly urges the Commission to expand the

^{11/}*Id.*, at ¶ 46.


^{12/}*Id.*, at ¶ 75.

scope of this proceeding to include preemption of unreasonable local regulation of all like reception antennas. The Commission should not pass on this opportunity to advance its federal objectives by unduly limiting this proceeding in a manner that benefits some, but not all, competitors in the multichannel video programming marketplace.

WHEREFORE, for the foregoing reasons, WCAI respectfully requests that the Commission expand the scope of its preemption of unreasonable local zoning regulations so that similar reception antennas utilized by competing multichannel video programming services are treated in a similar fashion.

Respectfully submitted,

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